

Bureau of Industry and Security, Commerce

§ 766.1

First, that [the denied person(s)] may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Export Administration Regulations (EAR), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the EAR that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a denied person, or service any item, of whatever origin, that is owned, possessed or controlled by a denied person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in § 766.23 of the EAR, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of

trade or related services may also be made subject to the provisions of this order.

Fourth, that this order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

This order, which constitutes the final agency action in this matter, is effective [DATE].”

[61 FR 12902, Mar. 25, 1996, as amended at 67 FR 54953, Aug. 27, 2002; 70 FR 8720, Feb. 23, 2005]

PART 766—ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

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SUPPLEMENT NO. 1 TO PART 766—GUIDANCE ON CHARGING AND PENALTY DETERMINATIONS IN SETTLEMENT OF ADMINISTRATIVE ENFORCEMENT CASES

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

SOURCE: 61 FR 12907, Mar. 25, 1996, unless otherwise noted.

§ 766.1 Scope.

In this part, references to the EAR are references to 15 CFR chapter VII,

subchapter C. This part describes the procedures for imposing administrative sanctions for violations of the Export Administration Act of 1979, as amended (the EAA), the Export Administration Regulations (EAR), or any order, license or authorization issued thereunder. Parts 760 and 764 of the EAR specify those actions that constitute violations, and part 764 describes the sanctions that apply. In addition to describing the procedures for imposing sanctions, this part describes the procedures for imposing temporary denial orders to prevent imminent violations of the EAA, the EAR, or any order, license or authorization issued thereunder. This part also describes the procedures for taking the discretionary protective administrative action of denying the export privileges of persons who have been convicted of violating any of the statutes, including the EAA, listed in section 11(h) of the EAA. Nothing in this part shall be construed as applying to or limiting other administrative or enforcement action relating to the EAA or the EAR, including the exercise of any investigative authorities conferred by the EAA. This part does not confer any procedural rights or impose any requirements based on the Administrative Procedure Act for proceedings charging violations under the EAA, except as expressly provided for in this part.

§ 766.2 Definitions.

As used in this part, the following definitions apply:

Administrative law judge. The person authorized to conduct hearings in administrative enforcement proceedings brought under the EAA or to hear appeals from the imposition of temporary denial orders. The term “judge” may be used for brevity when it is clear that the reference is to the administrative law judge.

Assistant Secretary. The Assistant Secretary for Export Enforcement, Bureau of Industry and Security.

Bureau of Industry and Security (BIS). Bureau of Industry and Security, U.S. Department of Commerce (formerly the Bureau of Export Administration) and all of its component units, including, in particular for purposes of this part, the Office of Antiboycott Compli-

ance, the Office of Export Enforcement, and the Office of Exporter Services.

Final decision. A decision or order assessing a civil penalty, denial of export privileges or other sanction, or otherwise disposing of or dismissing a case, which is not subject to further review under this part, but which is subject to collection proceedings or judicial review in an appropriate Federal district court as authorized by law.

Initial decision. A decision of the administrative law judge in proceedings involving violations relating to part 760 of the EAR, which is subject to appellate review by the Under Secretary of Commerce for Industry and Security, but which becomes the final decision in the absence of such an appeal.

Party. BIS and any person named as a respondent under this part.

Recommended decision. A decision of the administrative law judge in proceedings involving violations other than those relating to part 760 of the EAR, which is subject to review by the Under Secretary of Commerce for Industry and Security, who issues a written order affirming, modifying or vacating the recommended decision.

Respondent. Any person named as the subject of a charging letter, proposed charging letter, temporary denial order, or other order proposed or issued under this part.

Under Secretary. The Under Secretary for Industry and Security, United States Department of Commerce.

[61 FR 12907, Mar. 25, 1996, as amended at 67 FR 20631, Apr. 26, 2002; 70 FR 8250, Feb. 18, 2005]

§ 766.3 Institution of administrative enforcement proceedings.

(a) *Charging letters.* The Director of the Office of Export Enforcement (OEE) or the Director of the Office of Antiboycott Compliance (OAC), as appropriate, or such other Department of Commerce official as may be designated by the Assistant Secretary of Commerce for Export Enforcement, may begin administrative enforcement proceedings under this part by issuing a charging letter in the name of BIS. Supplement No. 1 to this part describes how BIS typically exercises its discretion regarding the issuance of charging